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In the
Supreme Court of the United States

OCTOBER TERM, 1968

Nos. 777 and 932

THE FIRST NATIONAL BANK in PLANT CITY,
Petitioner

vs.

FRED O. DICKINSON, JR., COMPTROLLER of the STATE of FLORIDA, ET AL.

WILLIAM B. CAMP, COMPTROLLER of the CURRENCY,
Petitioner

vs.

FRED O. DICKINSON, JR., COMPTROLLER of the STATE of FLORDIA, ET AL.

BRIEF FOR AMICI CURIAE INDEPENDENT BANKERS ASSOCIATION OF AMERICA, INDEPENDENT BANKERS OF FLORIDA AND WESTERN INDEPENDENT BANKERS

INTEREST OF AMICI CURIAE

Amici are associations of independent, locally owned, national and state banks. The Independent Bankers of Florida is a nonprofit association composed of about 200 independent unit banks in that state. The Independent Bankers Association of America is a nonprofit association composed of over 6400 independent unit banks in 41 states, including

Florida. The Western Independent Bankers is a nonprofit association representing almost 400 banks in 9 western states.

These associations are organized to represent the interests of unit banks, to preserve competition while preventing concentration of control of banking, and to maintain the national policy of competitive equality between national and state banks.

The *Amici* associations are alarmed by the use of the armored car and shopping center receptacle in the instant case. If these off-premise operations by national banks in Florida and elsewhere are permitted to continue and spread, national banks will have gained an advantage contrary to the national policy of competitive equality. In addition, the trend to banking concentration will inevitably increase.

QUESTIONS PRESENTED; STATEMENT; AND STATUTES INVOLVED

The Questions Presented; Statement; and Statutes Involved are as stated by respondents. Two other statutes were raised in the pleadings and argued in the proceedings below. 12 U.S.C. §24 (7) and §81 in their pertinent parts read as follows:

> "Section 24: Upon duly making and filing articles of association and an organization certificate a national banking association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—
>
> * * * * *
>
> Seventh. To exercise by its board of directors or

duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; * * *"

"Section 81: The general business of each national banking association shall be transacted in the place specified in its organization certificate and in the branch or branches, if any, established or maintained by it in accordance with the provisions of section 36 of this title."

SUMMARY OF ARGUMENT

I.

Since the National Bank Act was originally enacted, Congress has been faced with the problem of resolving conflicts with state bank systems. To solve this problem, Congress has chosen a policy of competitive equality by specifically adopting state standards in certain basic areas. But, if a supervisor of one system attempts to extend the powers of banks in his system by "rulings", the policy of competitive equality is thwarted.

II.

A. The "agency" ~~arguments~~ agreements between the Appellant bank and its customers are merely devices to evade and frustrate the applicable statutes and the Congressional policy of competitive equality. No valid "agency" can be created if it violates law, public policy, or injures third parties (e.g. Florida state banks).

B. The National Bank Act (12 U.S.C. §81) and the Florida Banking Code (*Fla. Stat.* §659.06(1)(a)) each provide that banks shall do business in "one-location" as applied to this case. This Court has recognized in numerous

decisions that state law applies to national banks if it does not conflict with federal law. Control and supervision of bank locations is an important element in maintaining competitive equality. The activities of Appellant bank violate both the federal and state "one location" laws.

C. Florida law (*Fla. Stat.* §659.06(1)(a)) prohibits branching and this law is specifically incorporated into the National Bank Act (12 U.S.C. §36(c)) to prohibit national banks in Florida from branching. Section 36(f) which defines a branch is only a partial definition and incorporates state standards. However, the definition contained in Section 36(f) covers the activities of the Appellant bank without resort to state standards. The Utah Supreme Court has held that certain off-premise activities of a bank are "branches" under a statute almost exactly the same as Section 36(f). The fears of the Comptroller and *Amicus* Georgia bank are without foundation since state bank supervisors will not attempt to hamper national banks. Any such "rulings" would adversely affect state banks as well and would not give state banks competitive advantages over national banks. Since the off-premise activities of Appellant bank are branches, they are prohibited by the provisions of the National Bank Act and the Florida Banking Code.

III.

A. The off premise activities of Appellant bank are not "incidental powers as shall be necessary to carry on the business of banking" under 12 U.S.C. §24(7). The "rulings" of the Comptroller in this case are but one example of his extension of national bank powers to gain competitive advantages for national banks. The Comptroller's record in recent years shows he is not in accord with the Congressional policy of competitive equality.

B. Branching is the fastest means to concentration of control of banking. The effects of such concentration are detrimental to the economy. Congress has shown concern over the effects of concentration by enactment of the Bank Holding Company Act and the Bank Merger Act. Each state should be free to adopt a policy which prevents such concentration and should have protection against a federal administrator intent upon changing its banking structure.

ARGUMENT

Introduction

This case arises as a result of a ruling of the Comptroller of the Currency in which he reversed numerous former rulings of his office dating back over a period of years. The ruling, Par. 7490 of the Comptroller's Manual for National Banks (A.381), purports to allow any national bank to use an armored car messenger service, owned by the bank and operated by bank employes, if these employes are "agents" of the bank's customers. In addition, a letter ruling by the Regional Comptroller (A.21) authorized the use of a deposit receptacle in a shopping center if the messenger taking the deposit from the receptacle to the bank is an "agent" of the bank's customer.

Respondents contend, and the *Amici* associations wholeheartedly agree, that these off-premise activities are clear violations of the federal branching law, 12 U.S.C. §36, the federal and state one-location laws, 12 U.S.C. §81 and Fla. Stat. §659.06, and the federal implied powers law, 12 U.S.C. §24(7).

Basic to an understanding and resolution of the questions presented are the historical background of our dual bank-

ing system, the breakdown of the statutory scheme which sustains it, the reasons for the "rulings" of the Comptroller of the Currency which have caused the mischief, and the implications to banking and the economy if these rulings are sustained.

I.

HISTORICAL BACKGROUND

From the beginning of banking in this country, there has never been any doubt as to the constitutional right of the states to charter banks and branches. On the other hand, in the early history of the federal government, there was doubt as to its constitutional power to charter banks. However, in *M'Culloch v. Maryland,* 17 U.S.(4 Wheat.) 316 (1819), the constitutionality of the charter by Congress of the Second United States Bank was sustained. This decision and others, e.g., *Osborn v. Bank of the United States,* 22 U.S.(9 Wheat.) 738 (1824) provided the basis for the national bank system in 1863.

Once it was established that state governments and the federal government each had the right to charter banks, it was inevitable that conflicts between the two bank systems would arise. Congress from the early days of the national bank system was faced with the problem of resolving these conflicts.

One solution would be for Congress to establish an independent national bank system, without regard to state laws regulating competing state banks. But this would produce one of two consequences. Either state legislatures would be forced to follow the federal statutes and regulations, or state banks would convert to federal charters in order to become competitive. In the end, this process would create a monolithic banking system throughout the country.

In its wisdom Congress has rejected such a proposal. For example, in the bill which later became the Banking Act of 1933, a proposal was made that national banks be permitted to branch statewide without regard to state law.[1] Before adoption of the bill, however, it was amended to provide that national banks could establish branches only as authorized to state banks by state law.[2]

The solution which Congress adopted and has consistently followed is the use of state law as the standard to provide for competitive equality between the two systems. Various sections of the National Bank Act specifically adopt state standards in several basic areas.[3]

There are other reasons, beyond resolving conflicts, for the policy of competitive equality. It recognizes the disparity in the economies of the various states, and the impracticality of a monolithic banking structure, e.g., what is best for an industrial state may be the worst for an agricultural state. The policy acknowledges that each state is best able to decide for itself what kind of banking structure is best suited to its economy. Banks in each system may voluntarily convert to the other system, and this option is intended to enhance fairness of regulation in both systems. Thus, within each state, national and state banks compete under the same basic laws.

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[1]S. Rep. No. 584, 72d Cong., 1st Sess. (1932); 75 Cong. Rec. 8350 (1932).

[2]76 Cong. Rec. 2205-2208 (1932). A thorough review of the legislative history of branch banking is contained in First National Bank v. Walker Bank and Trust Company, 385 U.S. 252 (1966).

[3]As to the measure of allowable capitalization of new national banks, 31 Stat. 48 (1900), 12 U.S.C. §51 (1935); as to interest rates on loans, 48 Stat. 191 (1932), 12 U.S.C. §85 (1935); as to securing public money deposits, 31 Stat. 1448 (1901), 12 U.S.C. §90 (1950); as to trust powers, 76 Stat. 668 (1962), 12 U.S.C. §92a(a) (1962; as to conversion of a national bank to a state bank, 64 Stat. 456 (1950), 12 U.S.C. 214c (1954); as to interest on demand deposits, 48 Stat. 181 (1933), 12 U.S.C. §371a (1935); as to interest on savings deposits, 12 U.S.C. §371 (1933), and as to taxation of national banks, 13 Stat. 111 (1864), 12 U.S.C. §548 (1926). *See* Franklin Nat'l Bank of Franklin Square v. People of State of New York, 374 U.S. 37 (1954).

Neither has advantages over the other *if these laws are properly interpreted and administered.*

In the instant case, the federal Comptroller has improperly interpreted federal law in order to extend to national banks a privilege not available to state banks under state law, thus giving national banks a competitive advantage. This case presents but one in a growing list of court tests of other "rulings" of the federal Comptroller which have disrupted the national policy of competitive equality, as we will develop later in this brief.

First, however, we will demonstrate that the federal Comptroller's "rulings" pertaining to the instant case (App. 21, 381) are attempted circumventions of law that cannot stand up under scrutiny despite the elaborate legal fictions designed to justify them.

II.

THE OFF-PREMISE ACTIVITIES OF APPELLANT BANK VIOLATE FEDERAL AND STATE LAWS

A. The "Agency" Agreements Do Not Create a Valid Agency.

The position of the Appellants, relying upon the federal Comptroller's "rulings", is based upon the validity of the "agency" agreements to the effect that the armored car messenger and the shopping center receptacle are agencies of the customers and not of the Appellant bank.[4] On analysis, both the armored car and receptacle are instrumentalities of the

[4]A review of the district court decision shows it rests on the validity of the "agency" agreements. Judge Carswell stated, "To argue that deposits are received or checks paid away from the banking premises is to ignore the plain effect of the deposit and agency contracts entered into by the bank and its customers". (A. 371).

bank and are merely extensions of its main office operations to other locations.

Under the facts in this case, the bank's presence in its operations is in the person of its employe, the messenger. His activities away from the bank's premises are the bank's activities.

In contrast, independent armored car services, like "Brinks", have been commonplace in banking throughout the country for many years. The difference is that Brinks armored car service is an independent agency, operating as a licensed common carrier under contracts with bank customers who pay for the service rendered for them. Such a messenger is the true agent of the customer, not of the bank. In this case there is no independent or third-party agent, merely a bank-customer relationship.

Courts regularly frown on forms or devices created and used for the purpose of evading, circumventing or frustrating statutory restrictions or prohibitions. While the settings vary, the principle is the same. As one court stated, "Realities, in short, and not mere forms must be considered by the courts. . . ."[5]

It is true that a bank and its customer may contract as to their deposit relationship and respective rights. However, there are important exceptions to this general rule to the effect that such a contract may not violate law, public policy or injure third-parties (in this case, Florida state banks).[6] The "night depository" cases cited by Appellant bank are not applicable since they involve on-premise, not off-premise, activ-

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[5]Francis O. Day Co. v. Shapiro, 267 F.2d 669, 673, (D.C. Cir. 1959). *See also* Whitney Nat'l Bank v. Bank of New Orleans and Trust Co., 323 F.2d 290 (D.C. Cir. 1963), *rev'd on procedural grounds*, 379 U.S. 411 (1965).

[6]9 C.J.S. *Banks and Banking* §267 (1938); 10 Am. Jur. 2d *Banks* §338 (1963).

ities and involve no restrictive statutes, as in the instant case.

B. The Off-Premise Activities of Appellant Bank Are Prohibited by the "One-Location" Sections of the National Bank Act and the Florida Banking Code.

Federal law permits national banks to operate at only one location unless the state laws where they operate permit them to have more than one location. In Florida, state banks are prohibited from having any branches and are expressly restricted to one location. Thus, national banks operating in Florida may not engage in banking operations away from the bank.

It is noteworthy that the federal and state law concerning location of a bank are almost identical in this case.

The federal "one-location" law, 12 U.S.C. §81, states in its pertinent part:

> The general business of each national banking association shall be transacted in the place specified in its organization certificate and in the * * * branches, if any, established * * * in accordance with * * * section 36 of this title.

The Florida law, *Fla. Stat.* §659.06(1) (a), states in its pertinent part:

> Any bank * * * shall have only one place of doing business * * * and the business of the bank * * * shall be transacted at its banking house * * * and not elsewhere.

Since the Florida statute prohibits any branching, the Appellant bank is limited by Section 81 to operating its banking business at its bank location and nowhere else.

The Florida statute, not being in conflict with the federal statute, also acts to bar the plaintiff bank from conducting its business at more than one place.

This Court in *First National Bank v. Missouri,* 263 U.S. 640, 656 (1923) stated:

> National banks are brought into existence under federal legislation, are instrumentalities of the Federal Government and are necessarily subject to the paramount authority of the United States. Nevertheless national banks are subject to the laws of a State in respect of their affairs unless such laws interfere with the purposes of their creation, tend to impair or destroy their efficiency as federal agencies or conflict with the paramount law of the United States.

In *Lewis v. Fidelity & Deposit Co.,* 292 U.S. 559, 566 (1934), this Court stated:

> But a national bank is subject to state law unless that law interferes with the purposes of its creation, or destroys its efficiency, or is in conflict with some paramount federal law.

In *Franklin National Bank of Franklin Square v. People of State of New York,* 347 U.S. 373, 378, n. 7 (1954), this Court stated:

> Even in the absence of such express language, national banks may be subject to some state laws in the normal course of business if there is no conflict with federal law.

We place particular stress upon control of bank and branch locations because the dual banking system would not work without such control. This is particularly true in Florida which has a "one-location" law.

Once the charter is granted, a national bank must conduct its business only at the place specified in its certificate.[7] It may change its place of doing business to another place only upon strict compliance with the transfer statute. 12 U.S.C. §30.

Likewise, Florida statutes underscore the importance of location. An application for a state bank charter must show "where the proposed bank * * * is to be located". *Fla. Stat.* §659.02(1) (d). The state comptroller is required to investigate whether there is need for a bank at the proposed location. *Fla. Stat.* §659.03 (1)(b). The state bank may operate at "only one place". *Fla. Stat.* §659.061(1)(a). The state bank may "change the location of its banking house" only "with written approval". *Ibid.*

Although some off-premise agency activities of a national bank may be legally permissible for administrative purposes, this is not such a case. When such activities interfere with the basic principle of competitive equality, and injuriously affect third-parties, namely, state banks in Florida, a bank cannot take shelter under the "administrative agency" umbrella to shield itself from the "one-location" laws. The off-premise activities of the Appellant bank violate both federal and state one-location laws. This violation alone could decide the instant case without resorting to branching laws or the definition of a branch.

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[7]Rep. McFadden, author of the amendment to Section 81 in 1927 explained the purpose of the amended section: "Section 8 amends section 5190 of the Revised Statutes so as to permit the general business of national banking associations to be carried on *at the home office and in the branch or branches which the bank may legally establish or maintain* in accordance with the provisions of section 5155 of the Revised Statutes as amended by this act. This section simply legalizes the business of banking that may be carried on in the branch or branches of national banks lawfully established." (Emphasis added.) 68 Cong. Rec. 5816 (1927). Further, if "place" in Section 81 is interpreted to mean community rather than the bank office, then Section 36(c)(1) controlling branching within a community would make no sense.

C. The Off-Premise Activities of Appellant Bank Are Prohibited by the Branching Section of the National Bank Act.

The combined effect of the federal branching statute, 12 U.S.C. §36(c) and the Florida branching statute *Fla. Stat.* §659.06, is to prohibit national banks in Florida from branching operations.

To determine what constitutes branch banking, 12 U.S.C. §36(f) must first be reviewed. It states in part as follows:

> The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business * * * at which deposits are received, or checks paid or money lent.

The definition uses the word "include", indicating that it is not intended to be a complete definition. This subsection is but one component part of the entire Section 36, the whole of which incorporates state standards for national banks by repeated references to "state law". When viewed in its entirety, Section 36, including the partial definition of branch contained in subsection (f), incorporates state law as the standard for state banks. If Section 36 is to have any meaning, it must be that if a state bank under state law cannot operate a branch, then a national bank in that state in an identical situation likewise cannot operate a branch. The principle of competitive equality is necessarily included in the definition of a branch because Section 36(f) is incomplete on its face, and must incorporate state law in order to give complete meaning and workability to Section 36 as a whole.

As an illustration of the incompleteness of Section 36(f), the record in this case shows that one of the important

functions of Appellant bank's armored car was to deliver cash to its customers for their commercial needs. This delivery of cash is not a "checks paid" transaction as that phrase is commonly understood, yet only banks are engaged in the business of caring for the cash and currency needs of their customers on a regular basis.

However, it is not necessary in the instant case to go outside of the definition in Section 36(f) to find that the off-premise activities of the Appellant bank are within the definition and, therefore, prohibited under Section 36(c). The receptacle and mobile unit readily fit within the description of "branch agency" and "branch place of business". As to receiving deposits, we need go no further than the commonly understood meaning of the language used. The fact situation in the instant case, viewed in substance instead of form, readily fits within the definition without resort to state law. When a customer of the Appellant bank turns over his deposit to the bank employe in the armored car, or places it in the shopping center receptacle to be picked up by the bank employe, the "deposits are received" by the bank. When the customer thus turns over his deposit, he has lost possession and control of it and the bank has received possession and control completely. The "deposits are received" irretrievably at that point, and only bookkeeping entries remain to be made at the office of the bank. Under these circumstances, it could be said that possession and control amount to perhaps 90%, and the bookkeeping at the bank amounts to 10% of the total processing of the deposit. Each part of the process is an indispensable portion of the entire transaction. A deposit cannot be recorded until it is first "received", in the sense that possession and control is taken by the bank's employe. Thus, receiving the deposit in one place and re-

cording it in another adds up to two places of doing the business of banking.

Viewed in another light, the recording portion of the transaction is not necessarily within the definition of Section 36 (f). The whole of Section 36 concerns transacting the business of banking at a place away from the main office of the bank. There are many lawfully operating branches where the "deposits are received", but where the final recording of the deposit on the customer's account is done at the main office of the bank. In this light, the mere receipt of the deposit at a place away from the bank would fit within the definition without final recording at the main office of the bank. Mere possession and control of money or checks in the hands of an agent of the bank, intended by the customer to become a deposit, would satisfy the commonly understood meaning of the words in the definition, without the need to inquire into the legal meaning of "deposit".

In either light, the obtaining of deposits at places away from the bank amounts to branching. This point becomes more clear when normal deposit relationships at the main bank office are viewed. There a customer walks up to the teller's counter, hands over his deposit and obtains a receipt. At this point the "deposit contract" is made by the mere conduct of the parties, the offer of the customer by his act in handing over his deposit, followed by acceptance by the teller in taking possession and control of the deposit. No formal written or oral contract is made at that point, yet the contract is made, without entry of the deposit in the bank's records. The entry is merely evidence of the deposit contract after it is made. In the instant case, the transactions with the bank's messenger are substantially the same, once the legal fictions are removed.

The Supreme Court of Utah had no difficulty in finding that partial or incompleted banking operations conducted away from the bank constitute unlawful branching. In *Continental Bank & Trust Co. v. Taylor*, 14 Utah 2d 370, 384 P. 2d 796 (1963), the court considered the initiating of automobile loans by insurance agents in many locations throughout the state. The bank claimed that these off-premise operations were not restricted by statute, and that in any event the loans were not completed until they reached the bank office. The state statute involved was practically identical with Section 36(f). It stated:

> "The term 'branch' as used in this act shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business at which deposits are received or checks paid or money lent." 384 P.2d at 799.

The Court found that the insurance agents "are in fact agents of the bank in conducting its business * * *" and further stated:

> * * * the Commissioner answers the Bank's question regarding the whereabouts of its "branches" by responding that mobile or door-to-door branch banking is as violative of the statute as though specific street addresses for such "branches" were had.
>
> This Court is inclined to and does agree generally with the contentions of the Commissioner in this case. 384 P.2d at 800.

The Florida statute provides that no off-premises banking is permitted, which is the simplest way of saying that any form of branching is prohibited. Section 36(c) specifically incorporates state law concerning branching. Section 36(f) is broad enough to include the receptacle and mobile unit

and their functions, even without consulting the state law. Thus, national banks operating in Florida are prohibited from engaging in banking away from the bank.

However, Appellants raise the specter that if the off-premise transactions are "branching", then the state supervisor can call any off-premise function branching and thereby interfere with the business of national banks. The facts are that Appellant bank, before the state supervisor issued his letter to it, publically advertised "Full Service Banking at your doorstep * * *" (A. 385), with an armored car described as a "mobile drive in staffed by an armed guard and two tellers * * * where customers may be served, and a communication system". (A. 389) The receptacle was described by the bank as "bringing banking services to you". (A. 387)

What Appellant bank advertised and intended was engaging in the business of banking at many locations away from the bank. Likewise, *Amicus* First National Bank of Cornelia, Georgia, actually is conducting "full service banking" at many places in Georgia, as well as in North Carolina, by the same devices and to the extent that Appellant bank had advertised but did not fully inaugurate due to the pending lawsuit.

This fact situation cannot justify the fears asserted by Appellants and the *Amicus* Georgia bank. Based upon these facts, the decision below is not "open-ended". Even if the definition of branch in Section 36(f) is held to incorporate the state's definition, there are adequate safeguards. A state bank supervisor normally would not restrict the normal and necessary administrative functions of a state bank away from its main office merely to hamper national banks. If he did, the aggrieved national banks, as well as state banks, have a number of court remedies, including the type in the

instant case. If court actions were to prove inadequate, Congress could simply make the definition of branching more precise.

Appellant Comptroller contends that certain listed functions are necessary to national banking, yet could be banned by state supervisors under the decision below. (Brief of Comptroller of the Currency, p. 34.) On analysis, these fears are not justified. For example, "new business solicitation" is not banking *per se*; "loan closings" at the office of the customer or his attorney is a requested and infrequent service; "sale of money orders and travellers checks" and "trust services" certainly need not be conducted at locations away from the bank; "banking by mail" is not denied by any state supervisor to our knowledge; "credit card service" is merely a loan service to the bank's customers which requires use of the mails and is not denied by any state supervisor to our knowledge; "correspondent bank services" are as old as banking, are merely interbank services, not bank-customer services, and have never been considered branching; "data processing" is involved in a petition for a writ of certiorari now pending before this Court and we, therefore, feel it inappropriate to comment upon it.

In short, these expressed fears, upon which Appellants ask this Court to reverse, simply lack substance. The same may be said as to the brief of the *Amicus* Georgia bank. It argues that affirmance by this Court would result in "disparity of treatment of national banks by the various states.". However, this is precisely the intended result of the federal branching statute and the principle of competitive equality. In addition, it overlooks the fact that a state supervisor cannot give a state bank a competitive advantage over a national bank since any state ruling affects banks in both systems equally.

III.

THE EXTENSION OF NATIONAL BANK POWERS BY THE COMPTROLLER OF CURRENCY IS INVALID AND DETRIMENTAL TO THE BANKING INDUSTRY

A. The "Rulings" of the Comptroller of Currency are Invalid.

Appellants attempt to justify the off-premise activities of the Appellant bank, otherwise unlawful under Sections 36 and 81, on the grounds that they are within the incidental powers of the bank, under 12 U.S.C. §24(7). The Section 24 issue is raised in the pleadings in this case. (A. 15, 31) In the proceedings below, the federal Comptroller, in support of his motion for summary judgment, filed an affidavit with the lower court stating, "The operation of messenger and receptacle services is incidental and necessary to the banking business as conducted by national banks today". (A. 184) His legal counsel at Atlanta, Georgia, in a "letter ruling" to the Appellant bank in 1966 stated, "A national bank, as an incident to its banking business, may construct off of its premises a receptacle for the receipt of night bags containing cash and checks". (A. 22)

While the issue of Section 24(7) was raised in the pleadings and argued, the lower court in pre-trial orders "postponed" consideration of this issue. (A. 215, 217, 218) However, the lower court (A. 365 et seq.) and the Court of Appeals (A. 391 et seq.) failed to pass upon this issue.

The "rulings" in the instant case call for a specified type of contract to be made. However, if the contracts call for unlawful activities, the "rulings" themselves are unlawful.

Obligations of a bank created by statute are carried in-

> to, and become a part of, the contract of deposit. However, the bank and the depositor have a legal right to make their own contract or arrangement, *so long as the rights of third parties are not injuriously affected and it is not contrary to law or public policy.* (Emphasis added.)
>
> 10 Am. Jur. 2d Banks §338 (1963);
> *See also* C.J.S. *Banks and Banking* §267 (1938).

The italicized exceptions to the general rule lie at the heart of this case. A bank and its customer cannot by private contract justify conduct otherwise unlawful.

It will be noted that the authorities cite three areas wherein such contracts may be unlawful. Related to the instant case these amount to the following. First, the off-premise banking operations of the Appellant bank are in violation of federal and state law (12 U.S.C. §§ 36 and 81, and *Fla. Stat.* §659.06). Second, this private contract violates public policy, namely, the principle of competitive equality, referred to above and expressed so emphatically in the *Walker Bank & Trust Co.* case, *supra,* note 2. Third, this private contract injuriously affects third-parties, namely, state banks in Florida.

To the extent that the ruling, Par. 7490, defines the normal practice, exemplified by the Brinks agency operations, there is no question of its legality. The difficulty arises because of the words in the ruling that "a national bank may provide messenger service" and because of the practice being permitted thereunder as revealed by the facts in this case and in the Georgia case. This practice is a radical departure from the norm of the true agency operation. Here the bank itself provides the service and is thus extending its operations off-premises in violation of law. To the extent

that the ruling, as construed and applied here, purports to authorize this direct service, it is unlawful.

Ruling 7490 was issued by the federal Comptroller in 1964, following contrary rulings issued by that office in 1953 and 1962 (A. 357-359) stating that armored car service of the type involved here would be in violation of the Section 36 branching law. It was about this time that the federal Comptroller broke with precedent and commenced to issue a series of "rulings" granting national banks new privileges giving them competitive advantages over state banks.[8]

Such attempts have been challenged successfully in the courts in recent cases where the federal Comptroller permitted national banks to underwrite revenue bonds,[9] and to act as an insurance agent.[10]

The federal Comptroller is being challenged in pending cases for permitting national banks to sell shares in a commingled securities fund,[11] to operate a travel agency,[12] and to sell computer services to the public.[13]

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[8]*See, Manual of the Comptroller of the Currency of the United States for National Banks,* e.g., rulings permitting off-premise deposit machines, No. 7491, issued Nov. 1966; off-premise loan production offices, No. 7380, issued Nov. 1966; off-premise payroll service, No. 7485, issued Nov. 1966; off-premise sale of money orders, No. 7500, issued March 1964; operating credit life insurance business, No. 7495, issued March 1964; owning and leasing personal property, No. 3400, issued Nov. 1966; owning and leasing buildings to public agencies, No. 3300, issued Nov. 1966; travel agency service, No. 7475, issued Nov. 1966; acting as general insurance agent, No. 7100, issued June 1963.

[9]Baker, Watts & Co. v. Saxon, 261 F.Supp. 247 (D.D.C. 1966).

[10]Saxon v. Georgia Ass'n of Independent Ins. Agents, 399 F.2d 1010 (5th Cir. 1968).

[11]Investment Co. Institute v. Camp, 274 F.Supp. 624 (D.D.C. 1967), *appeal docketed,* No. 21662, D.C.Cir., Feb. 13, 1968.

[12]Arnold Tours, Inc. v. Camp, 408 F.2d 1147 (1st Cir. 1969), *petition for cert. filed,* 37 U.S.L. Week 3452 (U.S. May 19, 1969) (No. 1407).

[13]Association of Data Processing Serv. Organizations v. Camp, 406 F.2d 837 (8th Cir. 1969), *petition for cert. filed,* 37 U.S.L. Week 3390 (U.S. April 10, 1969) (No. 1246); Wingate Corp. v. Industrial Nat'l Bank, 408 F.2d 1147 (1st Cir. 1969), *petition for cert. filed,* 37 U.S.L. Week 3452 (U.S. May 19, 1969) (No. 1408).

The statements of Comptroller Saxon are revealing as to his intentions in making these "rulings".[14]

> If we find unfilled community needs, or prospective needs, which could profitably support the expansion of banking facilities, we feel obliged to allow this gap to be filled in the public interest. This is the only standard we believe we may properly apply. The State authorities may properly apply other and different standards according to their own concepts of the role of State-chartered banks.[15]
>
> * * * * *
>
> We believe that if there is to be true dual ability that the two systems ought to operate in all substantive respects, the one independent of the other.[16]

As to branching, Comptroller Saxon stated:

> The standards which should govern the branching powers of national banks are not, in my judgment, the varied standards which are appropriate to meet the local needs of the 50 individual states.[17]

Thus, Comptroller Saxon plainly disagreed with the national policy of competitive equality established by Congress. His views continue under his successor, present Comptroller Camp. Addressing bankers in Texas, where, like Florida, all branch banking is prohibited, Mr. Camp, commenting on banking opportunities, stated:

> "In these circumstances, branching is the only proper means of meeting consumer needs and existing banks

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[14]*See, Conflict of Federal and State Banking Laws,* Hearings before the Committee on Banking and Currency, 88th Cong., 1st Sess. (1963).
[15]*Supra,* n. 14 at pp. 280, 281.
[16]*Supra,* n. 14 at p. 397.
[17]*Supra,* n. 14 at p. 24.

are in the best position to meet the initial developmental costs in new markets."[18]

Not only does the federal Comptroller by "rulings" grant national banks advantages over state banks, but also advises non-branching states to change their laws to permit branching, thereby automatically obtaining branching privileges for national banks under Section 36(c).

In the period from 1962 to 1968, under Comptrollers Saxon and Camp there were twenty-nine reported federal court decisions challenging their permission for national banks to branch which involved conflicts with state law. In almost all of them, the aggrieved state banks or state supervisors prevailed. These cases reveal an unprecedented defiance of branching statutes by the federal Comptroller. In contrast, there were only ten reported cases of this type from 1927 (when Section 36 was enacted) to 1962.[19]

From the federal Comptroller's record in recent years, there emerges an unmistakable objective to create an independent national banking system, free as possible from state standards, particularly as to branching. This objective can be attained in only two ways—indirectly, by breaking down state restrictions in the manner we are witnessing, or directly, by reversing national policy by statutory changes. The latter course being obviously impossible, the federal comptroller is attempting the indirect route by issuing "rulings". The effect of this course of conduct is to usurp the power of Congress to establish national banking policy.

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[18]Speech of Comptroller Camp to the Texas Bankers Association, San Antonio, Texas, May 14, 1968; *see also* speech of Comptroller Saxon to the Florida Bankers Association, Miami Beach, Florida, March 22, 1963. Both speeches available at the Office of the Comptroller in mimeo form.

[19]*See* annotations under 12 U.S.C. §36(c).

B. Branch Banking Accelerates Concentration of Banking Control.

If the philosophy of the federal Comptroller were to prevail, widespread branching would have profound effects on the structure of banking and the economy.

Branching is the fastest means to concentration of control of banking, far outrunning bank mergers and bank holding companies.[20] The process accelerates when mobile units and shopping center receptacles are used. These devices provide a multiplicity of locations for gaining deposits, at far less cost than brick and mortar branches at fixed locations.

Almost two-thirds of all banking assets in the country are held by branch bank systems.[21] In 1921 only 5% of all bank offices were branches; in 1964 branches accounted for about 50% of all bank offices.[22] Of about 14,000 banks in the United States, 100 have 47% of all bank deposits.[23] The concentration due to branching occurs in those states which permit it, and the percentage goes higher where more branching is permitted.

Appendix A to this brief provides vivid illustrations. In this latest table of the Federal Deposit Insurance Corporation, the total bank deposits in the 5 largest banks in each state is shown. The table is divided into 3 categories according to the laws of the states regarding branching, as follows:

> Statewide Branching (16 states)—5 largest banks control from 48 to 93% of all bank deposits.
>
> Limited Area Branching (16 states)—5 largest banks control from 22 to 55% of all bank deposits.

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[20]Staff of House Select Committee on Small Business, 86th Cong., 2d Sess., Report on Banking Concentration and Small Business (Comm. Print 1960).

[21]*Supra*, n. 20 at p. 8.

[22]*Supra*, n. 20 at p. 21 and 1964 FDIC Annual Report.

[23]*Supra*, n. 14 at p. 40.

Unit Banking Prevalent (18 states)—5 largest banks control from 16 to 42% of all bank deposits.

Concentration of deposits in fewer and fewer hands has adverse effects upon competition in banking. The large banks in a statewide branching state have a decided competitive advantage. They have the means to maintain massive advertising programs on behalf of all of the bank offices within the system. In contrast, unit banks, each having a small advertising budget, cannot compete effectively for new deposit accounts. The larger banks also have the means to seek out and establish new branch facilities in promising areas. Smaller banks have less capacity to run in this race. Thus, larger banks acquire most of the profitable locations, and can sustain their rapid growth by use of all the promotional media. Thus, bigness begets bigness, and the trend to concentration marches on.

The effects of banking concentration in the economy are subtle and not readily apparent. Alternate sources of credit are reduced, gradually but steadily. There are two main reasons for this. The tendency of bank supervisors, where permitted, is to charter branches of existing banks, rather than to charter new banks, and the number of banks in those states is reduced by merger as unit banks are converted to branches of larger banks. In fact, 85% of all bank mergers result in branches.[24] The result of this process is more bank offices, but fewer banks.[25]

Reduction of alternate sources means less availability of loans at fair rates that only bank competition can provide.[26]

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[24]*Supra*, n. 14 at p. 21.

[25]Staff of Board of Governors of Federal Reserve System, Senate Select Committtee on Small Business, 87th Cong., 2d Sess., Report on Recent Developments in the Structure of Banking (Comm. Print 1962).

[26]"Therefore, all things being equal, any reduction in the number of

A service area having 2 banks with 20 branches affords 2 sources of credit, not 22. Judgment on loans is in the final control of a distant main office manager. This often works to the disadvantage of the smaller borrower.[27]

Congress has shown great concern with banking concentration, its effect on the economy, and the causes and controls of the trend. It has enacted a Bank Holding Company Act[28] and a Bank Merger Act.[29] These acts control both national and state banks. As to branching, Congress since 1927 continues to defer to control by the states, over banks in both systems via *12 U.S.C.* §36. *This is a significant facet of the instant case.* If state control of the permissible extent of branching is curtailed by the decision here, no other control of this fastest vehicle for concentration will be available. The antitrust laws might be used in some branch-by-merger cases, but not as to de novo branching which is a form of internal expansion not involving acquisitions.

Beyond the experience in this country of the effects of banking concentration, the countries of Western Europe provide an image of the ultimate result. In each of those countries there is a handful of banks and thousands of branches. This concentration took place over the years for lack of any effective controls. Hand-in-hand with this trend in Europe,

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banks in a given market area or any feature of concentration such as *the growth of branch banking systems or holding company systems will tend to diminish competition in that area* and make it more difficult for a given businessman to secure loans.* * * It is obvious, then, that in the banking market the existence of alternative sources of supply for the would-be borrower is of the utmost importance". (*Supra*, n. 20 at p. 6).

[27]Congress recognized these facts when debating the McFadden Act. *See*, 67 Cong. Rec. 2850, 3248 (1927).

[28]12 U.S.C. §1841 et seq. For purpose of the Act see H.R. Rep. No. 609, 84th Cong., 1st Sess. (1955); S. Rep. No. 1095, 84th Cong., 2d Sess. 10 (1956).

[29]12 U.S.C. §1828(c). For purpose of the Act see H.R. Rep. No. 1416, 86th Cong., 2d Sess. 5, 9 (1960).

small business disappeared and cartels and combinations in commerce and industry developed. The large bank systems there found it more profitable and convenient to make one large loan to a cartel, than to make many smaller loans to small businesses.

As a result, small business largely disappeared for lack of needed bank credit, while large businesses and cartels prospered.[30]

In contrast, the United States literally is the only country remaining which has a significant segment of small business and industry within its economy. The most important support for small business is a competitive banking system. Removal of this support could lead to a result here of the type observed in Western Europe and elsewhere.

There are other implications. Where there is a strong segment of smaller business and competitive banking, there is a stabilizing balance wheel in the economy to prevent violent political swings from left to right as we have observed in other countries.

In this country, the economy varies by region and state. In many areas there are admixtures of commerce and agriculture, industry and mining. Communities and regions

---

[30]Congress made note of this development in one of its reports on the need for holding company legislation:

> "Your Committee should like to re-emphasize the fact that this is the only country left where most communities are served by home-owned and home-managed banks which are aware of and responsive to the needs of the people of their areas. Our independent banking system has been a vital factor in the development of the United States.* * * Other countries must depend on 3, 4, or 5 banks having up to thousands of branches. Policies and important credit decisions are made hundreds or thousands of miles from many of the branches. The interest of an enterprising local customer may run counter to that of a large main office account, in which event the former might suffer. This inevitably tends toward concentration in all lines, cartels, the stifling of new enterprises, and stagnation. . ." (H.R. Rep. No. 609, *supra*, n. 29 at p. 6). *See also* 102 Cong. Rec. 6857 (1956).

are products of geography, resources, climate, and even tradition, all affecting the nature of their local economies and banking structure.

From the beginning, we have believed as a nation in the principles of economic and governmental diffusion. We respect local autonomy and legislate against centralization and monopoly. We believe it is inherently more beneficial and safer to have judgments in our economic and political lives made by many, rather than a few.

In many states the belief is held that it is wise policy to maintain dispersion of bank power, and to depend upon new bank chartering to supply bank needs to developing areas. This policy assures smaller borrowers availability of credit at fair rates that competition provides. It gives the same assurance to larger borrowers, through the correspondent banking system whereby larger money-center banks provide loans and services directly to such customers or indirectly by loan participations with smaller local banks which initiate and service the loans. In these states, branching is prohibited or restricted.

States, like Florida, desiring to maintain a favorable environment for small business and competitive banking, by means of prohibiting branch banking, have the right to do so. And, having such a policy, Florida is entitled by federal law to have it respected by national banks within it borders. The Florida legislature, rather than the federal Comptroller, is best able to judge what type of banking structure is best for the state's economy.

It requires little imagination to envision what will happen in Florida if this Court reverses. The larger national banks, having the means to launch, maintain, and promote rolling branches would soon dominate the banking market in the

state. Deposits are the means to all ends in banking. Gaining deposits by unrestricted and unregulated use of rolling branches by national banks would soon force state banks to convert to national charters. Ultimately, the legislature would be forced to change its branching laws to save its state bank system.

Appendix A to this brief shows that the 5 largest banks in Florida have only about 15% of the total bank deposits in the state as compared, for example, with Nevada's 93%, Arizona's 92%, Oregon's 87%, California's 78%, Idaho's 86%, and Washington's 72%.

Florida wants to stay out of this high concentration category. It has made the judgment that unit banking is best suited to its unique economy. It has rejected pressure from large national banks for branching laws in every recent session of its legislature, pressures encouraged by the federal Comptroller in speeches there, (*supra*, n.19), and by "rulings" designed to circumvent its antibranch laws.

Florida is entitled to vindication of its judgment and to protection against a federal administrator intent upon changing its banking structure.

CONCLUSION

Amici associations urge that the judgment of the Fifth Circuit Court of Appeals be sustained.

Should Appellants' position prevail, the implications are ominous. National banks would then be free to use such off-premise devices to obtain deposits statewide and even across state lines, all without restriction or regulation because of the pretense that these devices are the agencies of the customers of the bank. If these practices are approved and become widespread, the principle of competitive equality

will become a nullity, the effectiveness of state banks as competitors will be drastically reduced, and we will have creeping centralized banking.

This case illustrates that competitive equality will function in fact only if the Comptroller of the Currency administers his office in conformity with the federal statutes. If fundamental changes in national bank policy are desirable or necessary, they should be addressed to Congress which alone can establish bank policy.

Respectfully submitted,

HORACE R. HANSEN
600 Degree of Honor Building
St. Paul, Minnesota 55101
Attorney for Amici Curiae

Of Counsel:
WAYNE P. DORDELL
HANSEN, HAZEN, DORDELL & BRADT

APPENDIX A

RELATIVE SIZE OF LARGEST COMMERICAL BANKS OR BANK GROUPS IN STATES CLASSIFIED BY STATUS OF BRANCH BANKING DECEMBER 31, 1967

STATE[1]	Percentage of deposits of all Commercial banks in - - Largest bank	Largest three banks	Largest five banks	Percentage of deposits of all Commercial banks in - -[2] Largest bank or bank group	Largest three banks or bank groups	Largest five banks or bank groups
States with statewide branch banking prevalent:						
Nevada	49.3%	76.3%	93.1%	54.8%	81.8%	91.1%
Rhode Island	51.4	87.9	93.9	51.4	87.9	93.9
Arizona	45.1	82.2	92.4	45.1	89.9	94.1
Delaware	36.5	75.7	91.5	36.5	75.7	91.5
Oregon	42.5	84.6	87.0	42.5	84.6	87.0
Hawaii	39.4	78.7	90.2	39.4	78.7	90.2
California	38.3	60.5	78.1	38.3	60.5	78.1
Idaho	34.9	77.4	86.3	34.9	77.4	86.3
Washington	32.5	59.9	72.2	32.5	59.9	72.2
Utah	30.2	60.7	71.6	31.2	61.7	72.6
Alaska	32.1	66.6	82.2	32.1	66.6	82.2
So. Carolina	22.8	45.5	55.2	22.8	45.5	55.2
No. Carolina	21.1	50.5	66.4	21.1	50.5	66.4
Maryland	19.0	41.6	60.5	19.0	41.6	60.5
Connecticut	18.7	43.8	57.0	18.7	43.8	57.0
Vermont	13.4	34.9	47.7	13.4	34.9	47.7

[1] Classification of States by prevalent type of bank organization as of December 31, 1958, described in Table 23 of the Annual Report of the Federal Deposit Insurance Corporation for 1960, p. 45.

[2] Figures for bank groups are the deposits of banks in each State controlled by a holding company registered under the Bank Holding Company Act of 1956, plus one group controlled through common stock ownership included for comparability with data for earlier years, treated for each case as though they were a bank and branches in the State.

RELATIVE SIZE OF LARGEST COMMERICAL BANKS OR BANK GROUPS IN STATES CLASSIFIED BY STATUS OF BRANCH BANKING DECEMBER 31, 1967

STATE[1]	Percentage of deposits of all Commercial banks in - - Largest bank	Largest three banks	Largest five banks	Percentage of deposits of all Commercial banks in - -[2] Largest bank or bank group	Largest three banks or bank groups	Largest five banks or bank groups
States with limited area branch banking prevalent:						
Massachusetts	28.0%	45.9%	55.9%	28.0%	49.3%	66.1
Michigan	18.1	37.6	48.9	18.1	37.6	48.9
Georgia	17.2	37.5	46.2	20.2	44.7	53.4
New Mexico	16.8	35.2	43.8	16.8	41.1	47.5
New York	16.7	41.6	57.6	16.7	41.6	57.6
Alabama	14.2	26.1	34.8	14.2	26.1	34.8
Louisiana	11.3	23.8	32.3	11.3	23.8	32.3
Maine	14.3	33.6	48.3	15.1	34.4	49.1
Pennsylvania	13.7	28.1	39.4	13.7	28.1	39.4
Mississippi	13.9	28.7	32.7	13.9	28.7	32.7
Ohio	10.9	22.9	29.8	10.9	23.2	32.8
Kentucky	10.7	25.9	34.1	10.7	25.9	34.1
Tennessee	10.4	28.5	40.4	10.4	28.5	40.4
Virginia	10.0	26.2	36.3	14.3	34.1	46.6
Indiana	9.4	23.0	28.1	9.4	23.0	28.1
New Jersey	6.0	15.7	22.8	6.0	15.7	22.8

[1]Classification of States by prevalent type of bank organization as of December 1958, described in Table 23 of the Annual Report of the Federal Deposit Insurance Corporation for 1960, p. 45.

[2]Figures for bank groups are the deposits of banks in each State controlled by a holding company registered under the Bank Holding Company Act of 1956, plus one group controlled through common stock ownership included for comparability with data for earlier years, treated for each case as though they were a bank and branches in the State.

RELATIVE SIZE OF LARGEST COMMERICAL BANKS OR BANK GROUPS IN STATES CLASSIFIED BY STATUS OF BRANCH BANKING DECEMBER 31, 1967

STATE[1]	Percentage of deposits of all Commercial banks in - - Largest bank	Largest three banks	Largest five banks	Percentage of deposits of all Commercial banks in - -[2] Largest bank or bank group	Largest three banks or bank groups	Largest five banks or bank groups
States with unit banking prevalent:						
Illinois	15.9%	36.3%	42.7%	15.9%	36.3%	42.7%
Colorado	14.7	34.5	43.7	14.7	36.2	47.4
Wisconsin	12.8	21.6	25.0	17.4	31.1	33.7
Nebraska	11.6	24.2	34.6	11.6	28.3	38.7
No. Dakota	8.3	15.6	21.7	16.4	40.1	49.9
Minnesota	10.7	29.4	33.2	29.9	56.5	60.9
Wyoming	9.2	23.7	32.5	16.3	33.5	43.0
Oklahoma	11.0	28.1	37.6	11.0	28.1	37.6
Missouri	10.1	23.9	30.9	8.3	23.9	30.9
So. Dakota	8.3	21.4	32.3	22.8	38.6	44.0
Texas	6.5	17.5	24.5	6.5	17.5	24.6
Florida	6.4	11.6	15.5	8.8	20.6	27.0
Kansas	6.1	12.3	17.0	6.1	12.3	17.0
Arkansas	6.6	15.7	21.4	6.6	15.7	21.4
New Hampshire	7.1	18.2	26.8	16.8	27.8	36.5
West Virginia	5.7	14.4	19.4	5.7	14.4	19.4
Montana	5.9	14.8	22.4	28.8	50.4	59.1
Iowa	4.7	11.1	16.1	6.4	12.8	18.1

[1] Classification of States by prevalent type of bank organization as of December 31, 1958, described in Table 23 of the Annual Report of the Federal Deposit Insurance Corporation for 1960, p. 45.

[2] Figures for bank groups are the deposits of banks in each State controlled by a holding company registered under the Bank Holding Company Act of 1956, plus one group controlled through common stock ownership included for comparability with data for earlier years, treated for each case as though they were a bank and branches in the State.

APPENDIX B

OFFICE OF THE SOLICITOR GENERAL
Washington, D.C. 20530

April 4, 1969

Horace R. Hansen, Esq.
Hansen, Hazen, Dordell & Bradt
600 Degree of Honor Building
Saint Paul, Minnesota 55101

Re: First National Bank of Plant City v. Dickinson, Oct. 1968 Term No. 777

Dear Mr. Hansen:

Pursuant to Rule 42 of the Supreme Court Rules, petitioner hereby consents to the filing of a brief *amicus curiae* in this case on behalf of the Independent Bankers Association of America and Western Independent Bankers.

Very truly yours,

ERWIN N. GRISWOLD,
Solicitor General.

B 2

OFFICE OF COMPTROLLER
STATE OF FLORIDA
Tallahassee
32304

April 7, 1969

Horace R. Hansen, Esquire
Attorney at Law
600 Degree of Honor Building
Saint Paul, Minnesota 55101

Re: Camp v. Dickinson; First National Bank in Plant City v. Dickinson et al; in the U. S. Supreme Court.

Dear Mr. Hansen:

On behalf of Comptroller Fred O. Dickinson, Jr. please be advised that consent is granted to the filing of amicus curiae brief on behalf of Independent Bankers Association of America and Western Independent Bankers in the above reference cases.

With best wishes, I am

Sincerely,

FRED O. DICKINSON, JR.
Comptroller of Florida.
V. CARROLL WEBB,
General Counsel.

VCW/jh

B-3

Law Offices
CARLTON, FIELDS, WARD, EMMANUEL,
SMITH & CUTLER
Tampa

April 7, 1969
Horace R. Hansen, Esq.
600 Degree of Honor Bldg.
Saint Paul, Minnesota 55101

Re: Camp v. Dickinson; First National Bank in Plant City v. Dickinson et al; in the U. S. Supreme Court

Dear Mr. Hansen:

I respond to your letter of April 2. This letter will serve as the consent of the Comptroller of the State of Florida, the Hillsboro Bank, the Peoples Bank of Lakeland and the First Ruskin Bank for you to file an amicus curiae brief in the captioned matters jointly in behalf of the Independent Bankers Association of America and Western Independent Bankers.

Very truly yours,

WM. REECE SMITH, JR.

WRS, Jr:ad

Law Offices
EDWARDS AND SAWYER
107 South Evers Street
Plant City, Florida 33566

April 29, 1969

Mr. Horace R. Hansen
Hansen, Hazen, Dordell & Bradt
Attorneys at Law
Saint Paul, Minnesota 55101

Re: The First National Bank in Plant City v. Dickinson, et al—U. S. Supreme Court—No. 777

Dear Mr. Hansen:

This will acknowledge receipt of your letter requesting my consent on behalf of The First National Bank in Plant City to your filing on behalf of the Independent Bankers Association of America a brief as amicus curiae pursuant to Rule 42 of the United States Supreme Court.

Please be advised that The First National Bank in Plant City does consent to your filing briefs as suggested.

Very truly yours,

EDWARDS AND SAWYER
By Robert S. Edwards.
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cc: Office of the Solicitor General
Wm. Reece Smith, Jr., Esquire
V. Carroll Webb, Esquire